

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON JUDGES DIVISION**

**EYM KING OF MISSOURI,
D/B/A/ BURGER KING**

Case 14-CA-188832

And

**WORKERS' ORGANIZING COMMITTEE,
KANSAS CITY**

**COUNSEL FOR THE GENERAL COUNSEL'S BRIEF
TO THE ADMINISTRATIVE LAW JUDGE**

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I. STATEMENT OF THE CASE

This case was heard by Administrative Law Judge Christine Dibble on June 30, 2017 based on a complaint that EYM King of Missouri, L.L.C., doing business as Burger King (Respondent), violated Section 8(a)(1) of the National Labor Relations Act when on November 28, 2016, General Manager Wendell Toombs threatened to discharge store employees at 1102 East 47th Street if those employees participated in a strike scheduled for the next day. General Manager Toombs further advised he would wait a week or two to discharge employees so it would not appear the discharge was related to the employees' engagement in protected, concerted activity. The record demonstrates Respondent violated the Act as alleged.

II. STATEMENT OF FACTS

Respondent operates a number of Burger King franchises in the Kansas City area, including the restaurant located at 1102 East 47th Street, the only facility involved in this proceeding. GC Ex. 1-E, GC Ex. 1-H. During all relevant periods, Wendell Toombs was the General Manager of the 47th Street Store. GC Ex. 1-E, GC Ex. 1-H.

The Workers Organizing Committee of Kansas City (WOC) scheduled a one-day strike for November 29, 2016. Tr. 22. On November 28, 2016, Kadijah Brown reported to work at the 47th Street Store around 2:00pm. Tr. 10. Shortly after arriving, Ms. Brown joined in a conversation between Mr. Toombs and other employees because she heard Mr. Toombs say he "was firing people who went on strike." Tr. 11. As the conversation continued, Mr. Toombs explained that since Ms. Brown and another employee, Laneqwa Williams, had been employed for less than ninety (90) days and were on probation, Ms. Brown and Ms. Williams could be fired for going on strike. Tr. 10-11. Mr. Toombs went on to say that he wouldn't fire Ms. Brown and Ms. Williams immediately, but would wait for a week or two "so that the two

incidents didn't look tied together.” Tr. 11. Because Ms. Brown believed Mr. Toombs might try to fire her, she subsequently talked with two shift managers, who are below Mr. Toombs in the management hierarchy, and was told Mr. Toombs was trying to scare employees into not going on strike. Tr. 11-12. Mr. Toombs was not part of these conversations, and never told Ms. Brown or other employees they could not be fired for going on strike. Tr. 13.

Later on November 28, 2016, Ms. Brown and Ms. Williams spoke with Jeremy Al-Haj from WOC about Mr. Toombs's threat to fire them for going on strike. Tr. 14, 22-23. Mr. Al-Haj advised Ms. Brown and Ms. Williams they had the right to go on strike, regardless of their probationary status. Tr. 23. Mr. Al-Haj gathered information from Ms. Brown to file a charge. Tr. 23. This charge was filed later the same day. GC Ex. 1-A. A few days later, representatives from WOC, community leaders, and religious leaders came to the 47th Street Store to talk with Mr. Toombs about what was alleged and provide him a copy of the charge. Tr. 58-59.

III. LEGAL STANDARD

When analyzing 8(a)(1) violations, the basic test is whether considering all of the circumstances, the employer's conduct would reasonably tend to restrain, coerce, or interfere with employee rights provided under Section 7 of the Act. *Mediplex of Danbury*, 314 NLRB 470, 472 (1994). Additionally, “it is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.” *American Freightways Co.*, 124 NLRB 146, 147 (1959).

In determining whether a remark made by an employer's agent rises to the level of a threat, the appropriate test is whether the remark can reasonably be interpreted by the employee as a threat."

Smithers Tire and Automotive Testing of Texas, Inc., 308 NLRB 72 (1992).

Accordingly, in this case it is immaterial whether any employees were disciplined or discharged for going on strike. General Counsel does not allege any discipline occurred. At issue is simply whether statements made by Wendell Toombs (that probationary employees could be fired for going on strike and that he would wait a couple of weeks before the firing so the strike and the discharge would appear unrelated) can reasonably be seen as interfering with the free exercise of employee rights under the Act.

Because this charge centers on the contents of a conversation, any disputes about what did and did not occur can only be resolved by assessing witness credibility. A credibility determination may stem from various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Hills & Dales General Hospital*, 360 NLRB 611, 617 (2014), citing *Double D Construction Group Inc.*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). A trier of fact may believe some, but not all, of a witness's testimony when making credibility resolutions. *NLRB v. Universal Camera Corp.*, 179 F. 2d 749 (2nd Cir. 1950).

IV. ARGUMENTATION & ANALYSIS

It is not disputed that on November 28, 2016, employees at 47th Street Store, including General Manager Toombs, engaged in conversation regarding the WOC strike planned for the next day. Mr. Toombs and Ms. Brown both testified that the conversation occurred. Tr. 10-11,

33-34. Mr. Toombs admits he took part in the conversation and asked employees if they were going on strike. Tr. 34-35.

In dispute is who was present for the conversation and what was said. Telling workers they can be fired for going on strike, and that their manager will wait a week or two to fire them so the firing does not appear tied to their protected activity, is certainly conduct that reasonably tends to restrain, coerce, or interfere with employee rights under the Act. Ms. Brown states Mr. Toombs made those statements; Mr. Toombs contends he did not. The case turns on whose testimony is more credible.

A. General Counsel's Witnesses Are Credible

General Counsel's case is based on the corroborated and credible testimony of Kadijah Brown, a former EYM King employee. As the record demonstrates, Ms. Brown left employment at the 47th Street Store due to pregnancy/child birth. She was not fired and is not a disgruntled former employee. Because the remedy sought is notice posting/notice reading, Ms. Brown has no stake in the case's outcome and will not receive any personal gain or remedy.

Ms. Brown's testimony provides a clear and credible picture of the events of November 28, 2106. Ms. Brown testified she was working at the 47th Street Store on November 28, and after witnessing Mr. Toombs's coercive remarks, she approached Jeremy Al-Haj, an Organizer for WOC, due to concerns she could be fired for going on strike. Tr. 11-12, 23. Ms. Brown was in fact so concerned with Mr. Toombs's remarks that she also talked with two shift managers about whether she could be fired for striking.

If, as Respondent contends, Ms. Brown was not working on November 28, 2016, and not scheduled to work on November 29, 2016, strike day, there would be no reason for her to be so concerned about Mr. Toombs's remarks or whether her participation in the strike would impact

her future employment. Respondent's Exhibit 2 fully corroborates Ms. Brown's testimony that she was present at the 47th Street Store on November 28, 2016, and indeed scheduled to work on November 29, 2016. Respondent's Exhibit 2 is notice of unconditional return to work following a one-day strike, and it lists several employees, including Ms. Brown. If not scheduled to work, Ms. Brown could easily have attended the protests or other events on November 29 and returned to work on her next scheduled day without fear of reprisal. Ms. Brown, or any other employee for that matter, would only be concerned about going "on strike" if said strike resulted in missed work. Accordingly, if participating in the strike would not have required Ms. Brown to miss work on November 29, 2016, there is no reason for her to provide unconditional notice to return to work.

The testimony of Jeremy Al-Haj further corroborates Ms. Brown's testimony. Like Ms. Brown, Mr. Al-Haj stands to receive no personal gain or remedy from this case's outcome. Even though Mr. Al-Haj was not part of the November 28, 2016 conversation with Mr. Toombs, he visited the 47th Street Store on November 28 during Ms. Brown's shift. Mr. Al-Haj corroborates Ms. Brown's testimony that she was working her regular shift at the 47th Street Store on November 28, 2016, and he also corroborates Ms. Brown's testimony that she sought guidance regarding whether she could be fired for going on strike the following day. Mr. Al-Haj further testified he obtained relevant details of the November 28, 2016 conversation from Ms. Brown so WOC could file an unfair labor practice charge. Consistent with Mr. Al-Haj's testimony, the charge in this case was filed on November 28, 2016.

Taken together, the testimony of Ms. Brown and Mr. Al-Haj presents a consistent account of the events of November 28 and 29, 2016, and demonstrates both the depth of Ms. Brown's concern and the coerciveness of Mr. Toombs's statements. Even after receiving

assurances from two shift managers that she could not be fired, Ms. Brown still felt it necessary to get additional assurances from her union representative before participating. Tr. 11-12.

Despite Ms. Brown's and Mr. Al-Haj's credible testimony, Respondent asks the Judge to instead credit Wendall Toombs's blanket denials. As explained below, however, Toombs's implausible and internally-inconsistent testimony warrants little weight.

B. Respondent's Primary Witness is Not Credible

Respondent's defense is based primarily on the testimony of Wendell Toombs, the 47th Street Store's General Manager, and the testimony of 47th Street Store employee Rahman Sallee. Respondent provides what is basically a two-part defense. First, Respondent alleges Mr. Toombs never made the statements at issue. Second, Respondent admits Mr. Toombs took part in a conversation on November 28, 2016 about the strike, but contends Ms. Brown was not part of that conversation.

Mr. Toombs's credibility, or lack thereof, will be analyzed in detail below. Mr. Sallee's testimony is irrelevant. This case is based on a conversation that occurred sometime between 2:00pm and 3:00pm on November 28, 2016. Mr. Sallee testified he always works from 5:00am to Noon, and is not generally in the store during other shifts. Tr. 70-71. Neither Respondent nor Mr. Sallee contends Mr. Sallee was even in the 47th Street Store during the conversation. As such, Mr. Sallee cannot corroborate Mr. Toombs's version of events.

1. Mr. Toombs Does Not Recall Details

Mr. Toombs, by his own admission, lacks memory regarding the events of November 28, 2016. Mr. Toombs stated, "...I don't even remember all of the employees that were working on that specific day. I have them on my schedule." Tr. 35. When asked if he could recall any employees who were involved in the conversation, Mr. Toombs said, "No, I really don't." Tr.

35. Mr. Toombs stated he does not remember “because I never knew all of this was even going to happen, is because I didn’t—it was nothing that I expected.” Tr. 35.

Despite his stated lack of recollection, Mr. Toombs described the conversation, “They were talking about the strike and what they were going to do, and I said, ‘You guys going on strike?’” Tr. 34. Then Mr. Toombs said, “The only employee who was there at that time while we were having that conversation was Shannon Ruth, I believe it was.” Tr. 35.

Mr. Toombs’s testimony contradicts itself. On the one hand, he acknowledges he overheard employees talking about the strike and asked them about it. On the other hand, he claims only Shannon Ruth was present for the conversation. If Shannon Ruth was the only employee present, Mr. Toombs could not have heard employees discussing the strike unless Ms. Ruth was talking to herself. Additionally, although Mr. Toombs claims Respondent’s Exhibit 1, a schedule for the week of Thursday, November 24, 2016 through Wednesday, November 30, 2016, is a true and accurate schedule, Shannon Ruth is not listed on Respondent’s Exhibit 1 as scheduled to work on Monday, November 28, 2016 when the conversation occurred. Respondent’s Exhibit 1 was printed on March 8, 2017, and Respondent presents it as a representation of hours actually worked.

Mr. Toombs repeatedly said the only way he knows who was at work on November 28, 2016 is by the schedule. Respondent’s contention Ms. Brown was not present on November 28, 2016 is based solely on Respondent’s Exhibit 1. The record shows neither Mr. Toombs nor Respondent’s Exhibit 1 is credible.

2. Respondent’s Exhibit 1 Is Not Credible

Despite Mr. Toombs’s contention that Respondent’s Exhibit 1 is true and accurate, there are multiple indications it is not.

a. Weekly Totals Are Incorrect

The most glaring inaccuracy is the last column, titled “Total.” This column appears to show the total number of hours each employee is scheduled for the week. The 47th Street store is a 24-hour store. Taking 24 hours in a day times seven days in a week results in a total of 168 hours. This is the maximum number of hours an employee could work in a week, if the employee worked around the clock, every day, without sleep or meals. While it is theoretically possible an employee could hit this number, it is neither likely nor probable. However, there are multiple employees listed on Respondent’s Exhibit 1 with “Total” lines showing the employee worked 283.75 hours in the week, 115.75 hours more than even theoretically possible.

For example, the first listing is Tyrone Birdwell. Mr. Birdwell was scheduled from 4am-6am on Friday, November 25. He was scheduled off from 6am-2pm, but then scheduled to return at 2pm and work straight through until 3:45am the following day. After a fifteen minute break, the schedule has Mr. Birdwell returning to work at 4:00am on Saturday, November 26 and working again from 4:00am-6:00pm for 17.75 hours. Mr. Birdwell was scheduled to work again, 10:00pm- 3:45am for an additional 5.75 hours. He then was scheduled for 7 hour shifts on Tuesday, November 29, and Wednesday, November 30, adding another 14 hours. Mr. Birdwell’s scheduled hours for the week add up to 37.5 hours; Mr. Birdwell’s “total” line shows 283.75 hours.

A similar issue exists with Dion Cullors. Mr. Cullors line reflects an additional wrinkle: on Saturday, November 26 Mr. Cullors is scheduled on overlapping shifts: from 6:00am-3:00pm, and from 2:00pm-10:00pm. On Sunday, November 27, Mr. Cullors is scheduled twice on the same shift, 2:00pm-10:00pm. Even including the duplicate and cross over shifts, Mr. Cullors’s total only reaches 51 hours; like Mr. Birdwell, the total line shows 283.75 hours.

Cassandra Johnson was scheduled for 12.75 hours. Her total shows 283.75 hours.

Cornelius McFadden was scheduled for 48 hours. His total shows 283.75 hours.

Shannon Ruth was scheduled for 11.5 hours. Her total shows 283.75 hours.

Tenish Smith, like Dion Cullors, was scheduled on overlapping shifts. On Monday, November 28, he was scheduled to work both from 2:00pm-10:00pm and from 3:00pm-10:00pm. On Tuesday, November 29, he was scheduled to work from 6:00am-3:00pm and from 2:00pm-10:00pm. Including his overlapping/double scheduled hours, his total hours scheduled would be 97.5 hours. His total shows 283.75 hours.

Stephanie Wright was scheduled for 21 hours. Her total shows 283.75 hours.

With only a paper copy of the schedule, it is impossible to find the source of the “total” errors, particularly as not all of the total lines are incorrect. However, the fact that there is such a significant, repetitive error in the “total” line demonstrates the document is not true and accurate.

b. It Is Physically Impossible to Work the Hours Scheduled

The totals alone demonstrate the document’s inaccuracy, but are not the only problem. As referenced above, several employees are “scheduled” either on overlapping shifts or twice on the same shifts. While it is possible for an employee to work back to back shifts, it is not possible for an employee to work duplicate shifts or overlapping shifts. If an employee is scheduled from 6:00am-3:00pm, but is also scheduled on the same day from 2:00pm-10:00pm, the employee can only physically fill one scheduled spot from 2:00pm-3:00pm. Additionally, even if the employee is scheduled on two separate shifts from 2:00pm-3:00pm, the employee is still just working one hour during that time. It is physically impossible for employees to work as scheduled on Respondent’s Exhibit 1.

c. Staffing Levels Are Too Low

Looking closely at how employees are scheduled, it is apparent the staffing levels represented are too low. The schedule simply does not correspond with representations made about the store's staffing requirements.

Mr. Toombs testified that during the dinner shift, from around 5:00pm to 10:00pm, there would be "maybe seven" employees working. Tr. 68. Kadijah Brown testified similarly, saying "...between five to seven" people worked the dinner shift. Tr. 73. On Respondent's Exhibit 1, the dinner shift on Thursday, Friday, Saturday, Monday, and Wednesday is staffed with four employees. The Monday dinner shift has five scheduled, but only four actual bodies (as Tenish Smith is scheduled to work both 2:00pm-10:00pm and 3:00pm-10:00pm). The dinner shift on Sunday is staffed with three (Dion Cullers is scheduled twice on 2:00pm-10:00pm, resulting in four "scheduled" but only three actual bodies). The only day Respondent's Exhibit 1 has five to seven people actually working on dinner shift is Tuesday, where five are scheduled.

When asked about appropriate staffing levels at the 47th Street Store, Mr. Toombs said "...all of these stores can run on—at the very minimum, three people; one in the kitchen, one on the front counter, and on in the drive-thru." Tr. 77. He later clarified that while the store can run with bare bones staffing, a dinner rush would "absolutely not" be scheduled that way. Tr. 78. Because both Ms. Brown and Mr. Toombs testified there were usually at least five people working dinner shift, it is unlikely at best that the restaurant ran with such low dinner shift staffing for a full work week.

These discrepancies show Respondent's Exhibit 1 does not accurately reflect hours or days worked. While Mr. Toombs may have been required to enter some sort of schedule into EYM King's scheduling system, it does not appear the entered schedule was followed, or that the

entered schedule even attempted to achieve necessary staffing levels. This supports Kadijah Brown's testimony that Mr. Toombs "didn't really make a schedule because he didn't know whether someone was going to come in." Tr. 74.

d. Schedule Does Not Indicate Who Actually Worked

Mr. Toombs's himself seemed to imply schedules are not the best indicator of which employees actually worked. Mr. Toombs stated, "...every week we are hiring two to three people on a consistent basis because these people don't come to work, and they don't show up and they are late, and we—we just have to have a pool of people to always reach into and grab in order to—to keep these stores open. This is a 24-hour store with a lot of young people who don't have any work ethic or values." Tr. 54-55.

Based on Mr. Toombs's testimony, there are regular changes in scheduled personnel because of employees who do not report to work. Those frequent changes are not represented on the computerized schedule. Respondent's Exhibit 1 is not the schedule the store works off of during the week. If someone doesn't come in, that person's name is "marked off" and the name of the person who replaces them is "wrote in." Tr. 44. Mr. Toombs is the only person with access to the scheduling software. Tr. 45. Shift managers write in any changes on a hard copy. Tr. 45.

According to Mr. Toombs, where the shift managers "physically wrote in the change, we wouldn't even keep that schedule." Tr. 46. The schedule "would probably get disposed of, thrown away, because it is no longer a viable schedule." Tr. 47. Hard-copy schedules with manager changes are only saved "through the first week." Tr. 47. Even if Respondent's Exhibit 1 is an accurate representation of the schedule as initially entered, there is no testimony or additional evidence confirming it accurately represents all necessary changes made during the

week. The hard-copy working schedules were not produced, nor was there any testimony from shift managers verifying Mr. Toombs transfers changes from the hard-copy schedule to the computerized system. In fact, Mr. Toombs's own testimony indicates Respondent's Exhibit 1 does not represent a usual work week.

e. The Schedule is "Absolutely" Unusual

During November 2016, there were approximately forty employees working at the 47th Street store. Tr. 54. Only seventeen are reflected on Respondent's Exhibit 1. Mr. Toombs testified it would be "absolutely" unusual for so many people employed at the store to not work at all during a week. Tr. 54. Kadijah Brown and Laneqwa Williams are both absent from the schedule; both were hired in November 2016 and were still in training during the week at issue. Tr. 42. Mr. Toombs testified he does not usually give trainees full weeks off of work during their training period. Tr. 42.

Although Mr. Toombs stated he would go in and update the schedule as changes occurred, there was no corroborating testimony from shift managers to indicate this is how the process works. Additionally, Mr. Toombs's testimony indicates the scheduling system is not particularly flexible and is not always accurate. Mr. Toombs said, "You can't—you can't make a draft. It allows you to move things and stuff like that, but it doesn't allow you to print—to print a draft. Once the schedule is done, it is pretty much done." Tr. 44.

f. Mr. Toombs Is Not on the Schedule

Finally, Mr. Toombs himself is not on the schedule, but all parties agree he worked on November 28, 2016 and on subsequent days during that week. Mr. Toombs stated there is not an additional schedule, so it does not appear managers are scheduled differently. Tr. 54. If the schedule were truly an accurate representation of hours worked, Mr. Toombs's name should

appear. Mr. Toombs testified several times that he only has so many hours to distribute. If he works some of those hours, particularly if, as he stated, he covers a shift because someone did not report for work, Mr. Toombs should be assigned those hours on the schedule.

Based on discrepancies within the document itself, and on the testimony about scheduling practices offered by Ms. Brown and Mr. Toombs, Respondent's Exhibit 1 does not present a true or credible representation of hours actually worked at the 47th Street Store from Thursday, November 24, 2016 through Wednesday, November 30, 2016. Accordingly, it should not be viewed as valid or credible evidence of whether Ms. Brown worked on November 28, 2016. Because Mr. Toombs relied so heavily on Respondent's Exhibit 1 to inform his testimony, that testimony is also not credible.

C. Respondent Admits Unlawful Interrogation

At hearing, Mr. Toombs testified employees were talking about the strike. Tr. 34. Mr. Toombs said he asked employees, "You guys going on strike?" Tr. 34 and then asked them additional questions regarding strike pay, the reasons for the strike, and made a request that any employee planning to strike notify him of his/her intent to strike. Tr. 35-36. Prior to hearing, General Counsel was unaware Mr. Toombs had questioned employees about their intent to strike. General Counsel's information regarding the conversation came from Kadajah Brown, who joined the conversation in progress.

Although unlawful interrogation is not specifically alleged in the complaint, the complaint does allege other 8(a)(1) violations occurring within same conversation as the unlawful interrogation. Whether new information becomes a de facto amendment of the complaint subject to ruling by the ALJ depends on whether the issue "is closely connected to the subject matter of the complaint and has been fully litigated." *Pergament United Sales*, 296

NLRB 333, 334, (1989), enfd. 920 F.2d 130 (2nd Cir. 1990). Although *Pergament* involved a situation where the violation had been alleged under a different section of the Act, the Board has applied the same test in situations where the conduct was not alleged as a violation.

The unlawful interrogation is closely related to the 8(a)(1) violations alleged and has been fully litigated. As noted above, the interrogation and the statements pled in the complaint all occurred within the same conversation, to the same group of employees, on the same day. During direct examination, Respondent's primary witness openly volunteered that he questioned employees regarding intent to strike. Respondent's counsel had sufficient opportunity, on both direct and re-direct, to seek any necessary clarification or retraction of Mr. Toombs's statements. Respondent's counsel did not do so, and Mr. Toombs's open admissions are part of the formal record. As such, there is sufficient basis for a de facto amendment of the complaint allowing the Administrative Law Judge to rule on the unlawful interrogation.

The Board uses a totality of the circumstances test to determine if an interrogation is unlawful and has developed various indicia to be considered in making such determination. *Westwood Health Care Center*, 330 NLRB 935-939 (2000). Factors include whether employer has a history of hostility or discrimination concerning employee rights; the nature of information sought; the identity and organizational level of the questioner; the place and method of the interrogation; and the truthfulness of the reply. *Id.* at 939. The standard is objective, and considers whether the questioning would reasonably tend to coerce employees and restrain exercise of Section 7 rights. *Multi-Ad Services*, 331 NLRB 1226, 1227-1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001). Whether the questioned employee felt intimidated is not part of the determination. *Id.*

As of the November 28, 2016 conversation, EYM King was already involved in another unfair labor practice proceeding regarding termination and refusal to hire employees due to protected, concerted activity. The information sought, what employees were going on strike, is information on which EYM King could base action against individual employees, particularly as Mr. Toombs expressed later in the conversation expressed intent to fire employees who struck. As the General Manager, Mr. Toombs was the highest ranking management official who regularly worked at the 47th Street Store. The interrogation was conducted in the store, with all working employees present, sometime between 2:00pm and 3:00pm on November 28, 2016, the day before a planned strike. It is unclear what specific employees answered Mr. Toombs's questions, and what responses were given. However, the overall context of the conversation points to a coercive interrogation. Mr. Toombs asked who was going on strike and then later in the same conversation expressed intent to fire strikers. Following the conversation, two different shift managers advised Kadijah Brown that Mr. Toombs was trying to scare employees so they would not go on strike. Tr. 11-12. Mr. Toombs's interrogation of employees and his subsequent statements would reasonably tend to coerce employees and restrain the exercise of Section 7 rights. General Counsel requests the Administrative Law Judge find a de facto amendment of the complaint, and find Employer engaged in unlawful interrogation of employees in violation of Section 8(a)(1).

V. CONCLUSION

For the reasons set forth above, the record establishes that Respondent violated Section 8(a)(1) when through General Manager Wendell Toombs, it threatened to discharge store employees at 1102 East 47th Street if those employees participated in a strike scheduled for the next day, when General Manager Toombs advised he would wait a week or two to discharge

employees so it would not appear the discharge was related to employee engagement in protected, concerted activity, and when General Manager Wendell Toombs unlawfully interrogated employees to determine strike participants. Counsel for the General Counsel respectfully seeks an order requiring Respondent to cease and desist from its unlawful conduct.

VI. REMEDIES

General Counsel urges both notice posting and notice reading as remedies. Respondent is a recidivist employer; its repeated and serious violations warrant both notice posting and notice reading. The Board has previously required that notices be read aloud by members of management or a Board agent when several serious unfair labor practices were committed by management officials. *Allied Medical Transport, Inc.*, supra. At 6 fn. 9 (2014). In situations where unfair labor practices are severe and widespread, a notice reading allows employees to “fully perceive that the Respondent and its managers are bound by the requirements of the Act.” *Federated Logistics & Operations*, 340 NLRB 255, 258 (2003) affd. 400 F.3d 920, 929-930 (D.C. Cir. 2005); see also *Homer D. Bronson Co.*, 349 NLRB 512,515 (2007).

Respectfully submitted,

/s/ Rebecca Proctor

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